

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

Civil Action No. 4:11-CV-00094-BO

BRUCE BANNISTER; MAX DUTTON;
and MARION TOWLES;

Towles,

vs.

WAL-MART STORES EAST, L.P.,

Defendant.

**APPENDIX TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT REGARDING MAX
DUTTON'S CLAIMS**

D-5

Declaration of Eric Litchfield Exhibit 5

M. Dutton's Performance Improvement Plan (PIP (11/23/2009))

PERFORMANCE IMPROVEMENT PLAN (PIP)

Associate's Name: Max Dutton

DATE: 11/23/09

Position: Store Manager

Market/Store:486/2000

Purpose: To provide a formal opportunity to assist a management associate in understanding the specific improvements in performance that are expected, and to provide a written record of each follow up session:

11/23/09- Implementation 12/23/09- 1st Follow-Up 1/23/10- 2nd Follow-Up 2/23/10- 3rd Follow-Up

IDENTIFY PERFORMANCE/BEHAVIOR CONCERNS: List specific problems, issues, occurrences, dates, times, etc.

- People Leadership – Failure to develop leadership within ASM group and build relationships amongst the leadership team of the facility.
- Associate Engagement- Failure to engage and foster open communication
- Execution of Company Policies/Procedures/Processes- Failure to adhere to company policies, procedures, and processes including Customer Inventory Flow Process

PERFORMANCE/BEHAVIOR CONCERN DEFINITION: List specific reason(s) why performance improvement plan is being developed.

1. Max Dutton has failed to demonstrate management and leveraging of talent. Max is responsible for developing all associates in his facility and ensuring company expectations are understood and executed as well as holding management accountable for failing to achieve those expectations.
2. Associate Engagement, specifically fostering open communication, is not at the level accepted by the company. His leadership and management style have not facilitated the development of his associates. Consequently, many associates' growth has been limited by curbing initiative and empowerment of salaried managers and hourly leaders.
3. Store execution of company policies/procedures/processes has not been consistent. Adherence to published policies such as scheduling, wage management to support the business in all areas of the store, Event Calendar plus/playbook execution, modular integrity, watching company merchandising programs, merchandising to company guidance and management routines has not been consistent. CIFP/IMS has not been executed to company standard. Areas of concern include staffing, scheduling, inventory flow process, backroom process, bin accuracy and overall in-stock levels.

IMPROVEMENT REQUIRED: List specific actions that the associate must take to correct the situation or behavior.

1. People Leadership: Talent-Manager and Leverage Talent
 - a. Manages New Management Structure roles, assignments and developmental opportunities with weekly one on one touch bases with management team (ZMS, ASM, Shift Managers). Provide people update to MM bi-weekly.
 - b. Identify, in conjunction with MHRM and MM, store hi-pos and determine ways to ensure ongoing development of Store Management talent development using IDP and collaborations via monthly touch-bases

- c. Review Achieve Global eLearning Modules: Developing Others, Correcting Performance Problems, Planning Performance Discussions, Clarifying Performance Expectations and discuss key learnings with MM bi-weekly.
2. People Leadership: Build Relationships: Network Internally and Externally
 - a. Work with MM to identify a peer mentor. Review Walmart Mentor Me Guide to understand expectations of the mentor/mentee role. Identify 5-6 mentoring activities (suggestions included in the Mentor Me guide)
 - b. Schedule time with your Mentor to observe you in a "tell, show, do" model so that you can receive feedback on your execution that you can share with MM.
 - c. Review Achieve Global eLearning Modules: Listening in a Hectic World, Speaking to Influence Others and discuss key learnings with MM bi-weekly.
3. People Leadership: Associate Engagement
 - a. Translate latest Store Associate Opinion Survey results into action plans and gain Store Management and Associate commitment and buy-in to implement. Create plan in next 30 days, gain commitment and buy-in in the next 60 days. Measure results in the next 90 days.
 - b. Complete Talent Development Associate Engagement-Best Practices materials to increase quality of influence and communication in the store. Use this as a self-paced activity to demonstrate completion of objectives.
4. Thought Leadership: Judgment
 - a. Use scorecard and other business metrics as identified by MM to measure, monitor and improve performance of playbooks, IMS (goal >89%). Report progress to plan bi-weekly to MM.
 - b. Find suggested readings on Crisp Series for Clear and Creative Thinking, Creative Decision Making and Emotional Intelligence Works to review. Look for ways to impact root cause analysis and implementation of applicable solutions.
5. Personal Development: Ethics and Compliance
 - a. Review company guidelines and policies in relationship to ethics and compliance. Partner with MHRM and MM to review and discuss.
 - b. Find suggested readings on Crisp Series for ethical behavior, honorable leadership and risk management within the framework provided by the company. Utilize those resources and partner with MHRM and MM to develop a reading/study program on ethics.

SUGGESTED MEANS OF IMPROVEMENT: List specific goals, objectives or performance and measurement standards that are expected of the associate and specific time frame for achievement.

1. Develop your associates for their role in your store and greater responsibility with the company. Utilize Store of the Community to define your managers' roles and responsibilities. You need to ensure management team understands, utilizes and executes company policy and procedures. In order to accomplish this, you will develop with each manager a Individual Development Plan (IDP) – address their opportunities and hone their strengths. You will also need to work with your ZMS/ZS on developing them from a merchandising and operational perspective. I expect to review the IDPs for each manager and understand how you are empowering them to grow and guiding them in their development. I expect to see you delegating and developing – serve as a teacher/coach to your team.
2. With my guidance develop a mentee relationship with a high-performing supercenter manager in order to develop yourself and obtain different views of the company. I, also, expect you to participate with the planning and preparation for store 1300 remodel and the start of that project. You can provide advice to Reed Clark based upon your stores "face lift" in the spring of 09. This will provide you with a chance to develop additional leadership and management techniques to support your growth. I will work with you on selecting a mentor and monthly agenda for your discussions and development.
3. In regards to operating within the company's processes and procedures, I expect to see all managers, ZMS/ZS and department managers utilizing playbooks and company tools to run their business. Participation in televised merchant shows – such as BAM – is mandatory. I expect to see all playbooks executed in the store per company direction – any deviation needs market manager approval. I expect that company preferred hours will be scheduled and worked. I will work with you and your team to address the

measures needed to support the summer beach season. Measurements will be scorecards – Front end, apparel, electronics, etc. – and consistent results above the market average are expected. A quarterly Unbeatable Excellence will also be scheduled; I expect to see improving results each time and those results nearing the company expectation of 90%.

4. Inventory process and outs: That you will week-over-week and month-over-month demonstrate improvements in the processes and resultant scorecards tracking inventory management and backroom processes. In addition, you will decrease outs week-over-week and month over month to the goal of 500 outs in a Div 1 store. You have the IMS weekly market call, market manager and market team for support with this goal. I expect that you will deliver consistent results above market average and under 800 outs by the end of the PIP.

Associate's Comments:

I will ensure this P.I.P. will be executed to the best of my ability. Thank You for the additional development.
[Signature]

DATE ISSUED: 11/23/09

See paper copy

[Signature] 11/23/2009
Immediate Supervisor's Signature

[Signature] 11/23/2009
Regional Human Resources Signature

By signing this Performance Improvement Plan, I acknowledge that I have received it and that it has been thoroughly explained to me. I have been permitted to ask questions about any areas that I do not understand. (This PIP does not create an express or implied contract of employment or any other contractual commitment. Employment at Wal-Mart is on an at-will basis, which means that either Wal-Mart or the associate is free to terminate the employment relationship in any time for any or no reason, consistent with applicable law.)

[Signature]
Management Associate's Signature

11/23/2009

Date